

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

74-2453

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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UNITED STATES OF AMERICA,

-against-

JAMES CARFORA,

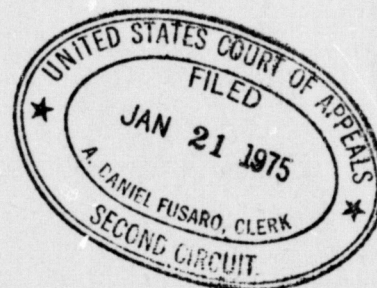
Defendant-Appellant. :

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APPELLANT CARFORA'S REPLY BRIEF



H. ELLIOT WALES

ATTORNEY AT LAW

~~200 BROADWAY~~ 747 Third Ave.

NEW YORK CITY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA,

:

-against-

Docket #74-2453

JAMES CARFORA,

Defendant-Appellant. :

-----X

APPELLANT CARFORA'S REPLY BRIEF

The appellant James Carfora submits this memorandum of law in reply to the answering brief of the government with respect to the issue of law posed by the refusal of the District Court to instruct the jury, following its traditional Allen charge, that the majority should also listen to the minority.

Actually the government does not cite a single case in which this Court, or any other court, has rejected the defense request for an instruction that in addition to the language of the Allen case itself, the majority should listen to the minority. Furthermore, the government brief does not address itself to the singular issue posed by the opinion of this Court in Martinez (446 F2d 118, 119) when it noted the problem posed by the instruction set forth in footnote 7 of Seasholtz

(435 F2d 4, 7).

We do not quarrel with the two opinions of this Court relied upon by the government - Hynes (424 F2d 754) and Rao (394 F2d 354). Neither opinion is despositive of the finely drawn issue posed by the record in this matter. In Hynes, this Court noted that the defense had not objected to the supplemental charge, nor did the defense offer any possible curative language. 424 F2d at 758. In Rao, the defense made a general objection to the Allen charge, and in addition we had the unusual situation in which the jury volunteered its innumerable split. 394 F2d at 355, 356.

In footnote 4 in Seasholtz (435 F2d 4, 7), the Tenth Circuit noted that the trial court had instructed the jury that "...if a greater number was for conviction or acquittal, consideration should be given to the situation as it might or might not bear on the responsibility of the various jury men in reaching a verdict."

In Martinez (446 F2d 118, 119), this Court cited that portion of Seasholtz, and noted that there could be a basis for a juror to feel "...that the judge is aware of the existence of a "minority" faction in the jury room, and addressed his remarks particularly to them, when he instructed only the minority to listen to the majority, and specifically refused the defense request that in addition the majority should listen to the minority.

It is difficult to believe what harm could have resulted if the District Judge had given the requested charge. Obviously the only result could have been for a fuller and healthier discussion between jurors - both majority faction and minority faction.

There is no reason why this Court should not encourage such fuller discussions amongst all jurors.

Respectfully submitted,

H. ELLIOT WALES
Counsel for Appellant

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff

against

JAMES CARFORA,

Defendant

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Docket #74-2453

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF

New York

SS.:

The undersigned being duly sworn, deposes and says:

*Deponent is not a party to the action, is over 18 years of age and resides at
Queens, New York.*

That on the 21st day of January
Reply Brief of Appellant

1975 deponent served the annexed

on United States Attorney
attorney(s) for Plaintiff,
in this action at United States Courthouse, Foley Square, New York, N.Y. 10007
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.

Sworn to before me

this 21st day of January 1975

H. ELLIOT WALES
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4129915
Qualified in Kings County
Commission Expires March 31, 1985 75

The name signed must be printed beneath

Lillian Kurtzer

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Plaintiff

against

Defendant

**ATTORNEY'S
AFFIRMATION OF SERVICE
BY MAIL**

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is
attorney(s) of record for

That on the day of 19 deponent served the annexed

on
attorney(s) for
in this action at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care
and custody of the United States post office department within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated this day of 19

The name signed must be printed beneath

Attorney at Law

